IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11687 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHCHANDRA J ACHARYA

Versus

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Appearance:

MR KB PUJARA for Petitioner

MR HS MUNSHAW for Respondent No. 1, 2

MS MANISHA LAVKUMAR, AGP, for Respondent No. 4

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/07/2000

ORAL JUDGEMENT

1. Challenge has been made by the petitioner in this petition to the order dated 6-10-1994 of the respondent No.1 under which his services were terminated.

2. On being selected by the Banaskantha District Panchayat Services Selection Committee, he was appointed on the post of Junior Clerk under the order dated 23rd June, 1980 of the respondent No.1. He joined the services on 26th June, 1980. Thereafter, he was sent for Pre Service Training for two months from 29th October, 1982 to 27th December, 1982 at Mahesana. He appeared at the Pre Service Training Examination held on 28th and 29th December, 1982. He was declared failed in the said examination. This was his first attempt. He appeared in the examination held on 14th and 15th October , 1983 but this time also he failed. This was his second attempt. It is the say of the petitioner that thereafter the examination was not held for a period of five years. By an order dated 4th April, 1988 the respondent No.1 has granted permission to the petitioner to appear in the examination i.e. to avail the third attempt to pass the examination. This examination was held on 13th/14th May, 1988. However, he cold not appear in this examination because of his ill-health. Vide application dated 13th May, 1988, the petitioner requested the authority to grant fresh permission to him for appearing at the examination for third attempt. The respondent No.1 vide its order dated 20th January, 1994, ordered termination of the petitioner's services on the ground that he had exhausted all the three attempts permissible to him under the Rules for passing of this examination. The petitioner filed the special civil application No.1108 of 1994 in this court and challenged therein the order of termination of his services made by the respondent No.1. He also prayed for the direction to the respondents No.3 and 4 to consider the petitioner's request for permission to appear at the examination for third attempt. This petition came to be decided by this Court on 21st February, 1994 and the order dated 20th January, 1994 of the respondent No.1 terminating the services of the petitioner was quashed and set aside and the respondents were directed to allow the petitioner to resume his duties. They were further directed to consider the petitioner's application for grant of permission to him to appear in the examination for third attempt. The petitioner accordingly was granted permission to appear at the examination for third attempt vide order dated 1st June, 1994. He appeared in the examination held on 6th and 7th July, 1994. It is his case that the result of this examination was not declared and communicated to the petitioner. In reply, the respondent has come up with a case that he failed in the examination and he has not accepted the order of termination of his services. Be that as it may. The fact is that he failed in this

examination, as a result of which, his services were terminated under the order dated 6th October, 1994. Hence, this special civil application.

3. Reply to the special civil application has been filed by the respondent No.1.

4. After filing of this special civil application, on the request of the petitioner, amendment therein has been granted.

5. Learned counsel for the petitioner contended that the termination of the services of the petitioner for non-passing of the Pre-Service Examination in third attempt is wholly arbitrary and contrary to the Gujarat Panchayat Services (Conditions of Service relating to Clerk, Typist (Gujarati or English) or Computer, Departmental Examination) Rules, 1984 (hereinafter referred to as `the Rules'). In his submission, if an employee fails to pass the departmental examination in the prescribed attempts and time period, he shall not be entitled for the grade increments. He submits that there is no provision for termination of services of an employee for non-passing of the departmental examination in three attempts and within prescribed period. Rules relevant to the point in controvery from these Rules have been read out. Alternatively it is submitted that looking to the long tenure of the services of the petitioner, he may be allowed a grace chance also.

6. Shri Munshaw, learned counsel for the District Panchayat submitted that the examination, reference of which has been made by the learned counsel for the petitioner is a qualifying examination for promotion. Pre-Service Examination is provided under the Government Resolution and there is a specific provision for termination of services of employee where he fails to pass that examination within permissible attempts and period. Learned counsel for the District Panchayat contended that the petitioner is trying to create confusion in these proceedings. It has next been contended that this plea which has been taken by the petitioner is not taken in the earlier proceedings and he is estopped from raising this plea. Lastly, it is submitted that three attempts have been provided to the petitioner and as he failed, no relief may be granted by this Court to him. Shri Munshaw, in support of his contentions, relied upon certain unreported judgments of this Court. To buttress his arguments, learned counsel for the respondent submitted that this court has laid down that in case a Clerk fails in passing of the

Pre-Service Training Examination in three attempts and within prescribed period, his services are to be terminated.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. It is true that in the earlier proceedings, the petitioner has not relied on the provisions of the Rules aforesaid. The matter has proceeded on the resolutions which have been made from time to time by the Government for Pre-Service Training Examination to be passed by the employees in three attempts and within prescribed time limit. It is equally true that in all the judgments on which reliance has been placed by the learned counsel for the respondent, these Rules have also not been referred therein. The Rules are of the year 1984 and the first resolution which has bene relied upon by the learned counsel for the respondent is of the year 1966. From time to time, this resolution has been amended. A provision for Pre-Service Training Examination and further provision for termination of services of an employee on his failure to pass the same within prescribed attempts is there. However, it is a legal question and it can be permitted to be raised in these proceedings. I do not find any substance in the contention of the learned counsel for the respondent that the petitioner is estopped from raising this point. Prima-facie it is difficult to accept that the departmental examination which is prescribed under the Rules, is a qualifying examination for promotion. It does not reveal from the Rules, though I am not expressing any final opinion on this aspect for the order which I propose to pass in this matter. These Rules, are statutory rules. The Rules have come into force on 18th May, 1984 and it is the appointed date. These Rules apply to the persons allocated or appointed as Clerk, Typist (Gujarati or English) and Computer (except Accounts Cadre) in the Panchayat services on or after the 1st April, 1963. Candidate has been defined in these Rules which means a person who is working as a Clerk , Typist (Gujarati or English) or Computer in Panchayat services. `Examination' means the examination prescribed under these Rules. Old Rules have also been defined which means the Rules for the Departmental Examination which were in force immediately before allocation.

Rule 3 of the Rules aforesaid provides that every person appointed as a Clerk, Typist (Gujarati or English) or Computer in Panchayat service prior or after to the appointed date, shall be required to pass the relevant

examination in three chances within a period of three years (four chances and within a period of four years in case of a scheduled caste or scheduled tribe candidate) from their appointed date. Relevant Examination has been defined in clause `g' of Rule 2 of the Rules which means the examination required to be passed under the old Rules.

9. Learned counsel for the respondent has not produced for the perusal of this Court the old Rules. If we go by these Rules, there were old Rules prescribing the departmental examination.

10. Rule 4 is an another important provision of these Rules on which strong reliance has been placed by the learned counsel for the petitioner. Rule 4 provides that where a person fails to pass the examination in specified chances or within the specified period, his increment shall after expiry of the specified period, withheld until he passes the examination. This Rule further provides that any increment so withheld shall become payable to him from the date on which he passes the examination and all further increments shall accrue to him as if no increment had been withheld subject to the rider that he shall not be entitled to claim the arrears of pay which were lost to him by reason of the increments having been withheld.

11. Sub-rule (3) of Rule 4 lays down that where a person appointed prior to the appointed date, fails to pass the examination in specified chances or within specified period he shall not be eligible for confirmation. So from this sub-rule (3) of Rule 4 of Rules, 1984, I find that in the cases of persons who have been appointed prior to the appointed date and after the appointed date, different consequences may ensue on failure of them to pass the examination in specified chances or within specified period.

12. In the case of persons appointed prior to the appointed date, on their failure to pass the examination within specified chances or within specified period they shall not be eligible for confirmation, meaning thereby, in their cases, the grade increments may not be withheld. In the case of those employees who have been appointed after the appointed date, on their failure to pass the examination in specified chances and within specified period, their increments shall be withheld until they passes the examination. However, nothing can be said finally as it is a matter first to be decided by the respondent No.2.

13. Rule 5 may make the position clear and it may not remain in doubt that for non-passing of the departmental examination in specified chances or within specified period, there may not be a question of termination of services of the employee concerned.

14. However, as from this aspect, the matter has not been considered by the respondents before terminating the services of the petitioner, I consider it to be appropriate to send this matter to the respondent No.2 to examine this matter afresh with reference to these provisions of the Rules and then pass appropriate order.

15. In the result, this special civil application is disposed of in terms that the termination order is not interfered with, at this stage, but the petitioner is free to file a detailed representation against this termination order to the respondent No.2 and therein to raise the contentions with reference to the Rules, 1984 and the said authority shall decide the matter within a period of one month from the date of receipt of the same and after hearing the petitioner where he desires personal hearing. In case the respondent No.2 is satisfied that the Rules, 1984 are applicable and for non-passing of the departmental examination within specified chances or within specified period, the services of the petitioner cannot be terminated, then the order of termination may be recalled and he may be reinstated back in service. It is open to the respondent No.2 to decide whether this reinstatement should be with full backwages or without backwages. Where the respondent No.2 decides the matter against the petitioner, a reasoned order may be passed and copy of the same may be sent to the petitioner by registered post A.D.. Liberty is granted to the petitioner for revival of this special civil application in case the respondent No.2 passes the order adverse to him. The special civil application and Rule stand disposed of accordingly with no order as to costs.

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